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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/038,796
Filing Date: December 31, 2001
Appellant(s): RUMAN ET AL.

MAILED
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GROUP 3700

Richard L. Bridge
For Appellant

EXAMINER'S ANSWER

This is in response to the supplemental appeal brief filed 10-26-06 appealing from the Office action mailed 9-6-05.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

5,386,595	KUEN et al	2-1995
5,125,246	SHYTLES	6-1992
5,693,401	SOMMERS	12-1997

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Interpretation Section

The terminology “article … for personal wear” has not been specifically defined and therefore will be given its ordinary meaning, i.e. an article which is worn on the person. It is further noted that the claims do not require entanglement of the hook component and the loop component but rather fastenable engagement of the two components. It is also noted that neither the loop material nor the substrate is required to be elastic only stretchable in claims 25 and 27. “Elastomeric” and “elastic” have been defined on page 6, lines 10-15. While “stretchable” has not been specifically defined, the definitions “stretch bonded” and “stretch bonded laminate” on pages 9-10 are noted especially with regard to the fact that one of the layers is a gatherable layer. “Stretch” as defined by the dictionary is defined as “to extend at full length”, i.e. a stretchable material is at least extensible in some manner, e.g. from a gathered to ungathered length. The terminology “secured” has not been specifically defined and therefore will be interpreted as direct or indirect securement.

Ground A.:

Claims 17-19, 25, 27 and 30-31 are rejected under 35 U.S.C. 102(b) as being anticipated by Kuen et al '595.

With regard to claims 17, 25, 27 and 30, see Figure 7, col. 1, lines 13-28, col. 4, lines 14-46, i.e. the absorbent article for personal use is 70 and is formed to have a body 22 having first

and second end regions, 28, 29, and comprises an inner layer 25, an outer layer 24 and an absorbent core 26, col. 13, line 38-col. 15, line 5, especially col. 14, lines 48-58, and thereby 5,125,246 at col. 1, lines 33-60, especially lines 37-41 and 50-52, i.e. a mechanical fastening system is positioned on the body 22 including a loop component, 76, 78, 79 and 78 and 79, i.e. the loop material and substrate are capable of elastic stretch and retraction, e.g. they are each alone or as a combination, e.g., a knitted elastic fabric such as taught by '246, and a hook component, col. 10, line 58-col. 11, line 30, i.e. the loop component is manually stretched around the wearer in a direction toward the downwardly slanted component and into opposed relationship thereto, engaged with the hook component and released so as to allow or provide an upward force or tension, i.e. a retractive force or urged sliding movement. With regard to claims 18-19 and 31, see col. 14, lines 29-41, i.e. stretching by about 280-300 %. It is the Examiner's first position that the Kuen et al reference explicitly teaches the claimed method. In any case the Kuen et al device is the same as the device described for carrying out the claimed method. Therefore there is sufficient factual basis to conclude the Kuen device would inherently perform the claimed process, see MPEP 2112.02.

Ground B.:

Claims 25 and 27 are rejected under 35 U.S.C. 103(a) as obvious over Sommers et al '401.

See Figures, i.e. the retaining device is an article which is worn on the person and includes a hook component 30 and a loop material secured to a substrate, e.g. see col. 3, lines 60-62, col. 4, lines 40-60, and col. 7, lines 10-15, i.e. the looped surface of the stretch bonded

laminate making up strip 10 and the remainder of the laminate making up the strip 10, see Claim Language Interpretation section supra, and col. 10, lines 25-40, i.e. the fastening components of the article are secured in engagement by arranging, engaging and urging by contraction. See also col. 9, lines 52-59. Specifically since col. 10, lines 25-40 set forth that the elastic strip 10 is stretched and then released to allow retraction/contraction, the loop component, i.e. the looped surface of the stretch bonded laminate making up strip 10 and the remainder of the laminate making up the strip 10, is also stretched and then released and retracted/contracted. Sommers et al does not explicitly disclose contraction of the loop component at the seam. However it is well known to attach the ends of an elastic band under tension by grabbing either one of the ends and stretching it to bring it, adjacent where the band is grabbed, into engaging contact with the other end which is stationary or by grabbing both ends and stretching them to bring them into engaging contact with each other adjacent where they are grabbed. Therefore, to attach the ends of the elastic strip of Sommers under tension by stretching the one end including the loop component, bringing it into engaging contact with the other end to form a seam and releasing the one end so that the one end, i.e. loop component, at the seam retracts/contracts, if not already, would be obvious to one of ordinary skill in the art in view of the well known interchangeability of methods of attachment. Again, as set forth in the cited portions of '401 the loop component can be the surface of the stretch bonded laminate which makes up the strip 10, e.g. the gatherable layer. This gatherable layer/loop component slides to flatten out as the strip 10 is stretched around the wrist or arm to bring the two fastening components together, i.e. from the point of origin of the stretch, the loop component fastens to the hook component to form a seam and the loop component slides /retracts to return to its gathered state in the direction(s) opposite to the

direction of the stretch, i.e. back to the point of origin of the stretch. When tension is released, the sliding or retraction, i.e. gathering of the gatherable layer, necessarily occurs to some degree along the entire strip between the stretch point of origin and the seam and thereby there is an urging of sliding movement of one component relative to the other at the seam which sliding movement necessarily promotes increased engagement (It is noted that the specific amount of sliding has not been claimed).

(10) Response to Argument

Ground A.:

Claim 25:

Appellant's arguments on pages 9-12 have been considered but are deemed not persuasive. Specifically, Appellants argue, that 1) Kuen has nothing to do with, and has no disclosure of, any method for achieving a more secure connection of fastening components with respect to each other, 2) there is no suggestion of contracting, specifically of the components with respect to each other at the engagement seam, i.e. where they are connected, following engagement to improve the strength of connection, 3) the loop material of Kuen is located at the very ends of the strap, 4) contraction of a stretchable loop material and a stretchable substrate to which it is applied to is required by claim 25, 5) that since the Examiner provided an alternative position based on inherency that the reference to Kuen fails to disclose the claimed method and 6) evidence to support the position of inherency is clearly absent and is therefore unsupported hindsight by the Examiner. First, however, it is unclear at page 11, lines 19-24 what Applicant is arguing, e.g. is Applicant arguing the pulling on the strap from outside the area of connection /area of engagement/the engagement seam discloses pulling on the seam but not contraction

thereat? With regard to 1), such arguments are clearly narrower than the teachings of Kuen, see, e.g., col. 1, lines 46-67. With regard to 3), such arguments are also narrower than the teachings of Kuen, see, e.g., Figure 7 and col. 14, lines 42-58, i.e. the loop component is not limited to the very ends of the strap, it can be the entire strap. With regard to 2) and 4), see again, e.g., col. 14, lines 42-58, and thereby '246 at, e.g. col. 1, lines 33-60, note especially lines 32-41 and 50-52, and col. 10, line 58-col. 11, line 30, e.g. the entire strap 76 can form the loop component and such strap, i.e. the entire strap, can be formed of, e.g. the knitted elastic lock pile fabric as taught by '246 which includes a knitted elastic webbing, e.g. an elastic substrate, with a loop pile surface which can serve as the loop portion of a hook and loop fastener which loops return to their knitted shape and size upon removal of stress, e.g. tension, they have undergone, i.e. change shape and size when tension is applied, and such strap is tensioned by stretching and relaxes, e.g. by release of tension, during use. With regard to 5) Appellants' remarks are narrower than the rejection in Section (9), A., i.e. "It is the Examiner's first position that the Kuen et al reference explicitly teaches the claimed method". With regard to 6), see the discussion supra which clearly indicates that evidence "is not absent", and thereby the inherency argument is not unsupported hindsight speculation by the Examiner. It is noted that there is no argument by Appellants that the claimed method is not inherent, i.e. only argues inherency has not been established. In conclusion, Appellant's arguments are narrower than the teachings of the prior art and the rejection based thereon.

Claim 27:

See again, e.g. col. 14, lines 42-58, and thereby '246 at, e.g. col. 1, lines 33-60, note especially lines 32-41 and 50-52, and col. 10, line 58-col. 11, line 30 and the discussion of claim 25 supra, e.g. the entire strap 76 can form the loop component and such strap can be formed of, e.g. the knitted elastic lock pile fabric as taught by '246 which includes a knitted elastic webbing, e.g. an elastic substrate, with a loop pile surface which can serve as the loop portion of a hook and loop fastener which loops return to their knitted shape and size upon removal of stress, e.g. tension, they have undergone, and such strap is tensioned by stretching and relaxes, e.g. by release of tension, during use.

Claims 17-19 and 30-31:

See the discussion of the arguments with respect to claims 25 and 27 which are the same arguments as made with regard to claims 17-19 and 30-31.

The rejection of claims 17-19, 25, 27 and 30-31 is deemed proper and maintained.

Ground B:

Claims 25 and 27:

Appellants' remarks on pages 16-17 of the Brief have been considered but are deemed not persuasive. Specifically, Appellants argue 1) Sommers does not appreciate or is concerned with increasing engagement and gripping strength, more specifically, Sommers does not teach either the loop material nor the hook material as stretching and contracting, and, most specifically, Sommers does not teach contracting the substrate and the loop material relative to

the hook component to promote increased engagement at the engagement seam, and 2) that it is not obvious or inherent from Sommers to use the claimed method. With respect to 1) see not only the rejection supra in Section (9), B., e.g. Figures 3-6 and col. 7, lines 11-15 cited therein, as well as col. 9, lines 4-18 of Sommers which teach stretching and contracting of the substrate and loop material of the component, and also col. 10, lines 28-33 of Sommers, i.e. an appreciation for retained engagement or grip between hook and loop components while subjected to retractive forces. It is also noted that the Examiner admitted the lack of explicit disclosure of contraction of the loop component at the seam. Note, however, the lack of claiming of the specific amount of contraction at the seam and Appellant's remarks at page 17, lines 15 et seq. Further note that the strip not just the ends can be a loop component. Finally note that the location of the engagement seam is not claimed as being at the end of the component. With regard to 2) the Examiner does not argue that the claimed method is inherently performs during use of the Sommers device, i.e. does not argue inherency, but rather that it is well known to attach an elastic band in a certain manner, i.e. obviousness argument regardless of the lack of a secondary reference.

Finally on page 18 Appellants' new unsubstantiated conclusion(s) that if the claimed method had been obvious or inherent in view of Sommers it would have been used and/or the benefit of such method has never been heretofore realized has been noted but deemed not persuasive.

The rejection of claims 25 and 27 are deemed proper and maintained.

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(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

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